IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1823 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SG METHA

Versus

UNION OF INDIA

Appearance:

MR DM THAKKAR for Petitioner

MR BHARAT T RAO for Respondent No. 1

MR DARSHAN M PARIKH for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 11/02/98

ORAL JUDGEMENT

1. Rule. Mr. B.T. Rao and Mr. Darshan Parikh waive service of Rule on behalf of respondents Nos. 1 & 2 respectively. With consent of the learned advocates, the petition is finally heard today.

2. The petitioner by way of this petition challenges the communication dated 24th May, 1995 - Annexure C, Part

1 thereof, issued by the Union of India - respondent No.1 herein, refusing to make the Reference. It is the case of the petitioner that the petitioner was employed as a peon in the respondent no.2 - Bank as Daily Wager. On 22.4.91, services of the petitioner were terminated by respondent No.2 - Bank in violation of sections 25F and 25G of Industrial Disputes Act, 1947 (hereinafter called "the said Act"). It appears that in the conciliation proceedings, respondent No.2 - Bank on 14.10.93 informed the Conciliation Officer that the petitioner is regularly engaged as Daily Wager on leave vacancy of permanent staff and therefore, the Bank requested to close the dispute. Accordingly, on 3.2.94, the conciliation proceedings were closed. It is further the case of the petitioner that on 28.2.94, services of the petitioner were abruptly terminated orally without following the procedure under section 25F of the said Act, and the juniors were retained in the service also in violation of section 25G of the said Act. The petitioner accordingly filed a complaint before the Conciliation Officer on 2.5.95. The Assistant Labour Commissioner (Central), Adipur made failure report to the Central Government, respondent No.1 herein. The Central Government as stated above, on 24.5.95 refused to make reference on the following grounds.

> "It is reported that the workman had not put in 240 days of continuous service during any of the calendar year so as to be made entitled to the benefits of section 25B and 25F of the said Act. It is further reported that the workman could not be considered for permanent absorption in the Bank services as he did not fulfill criteria laid down for the purpose."

This order is challenged in the present petition. Mr. D.M. Thakkar has challenged the impugned order by contending that the Central Government, by entering into merits of the dispute has refused to make reference which is totally illegal in view of the law laid down by the Hon'ble Supreme Court. On the other hand, Mr. Darshan Parikh, learned advocate appearing for respondent No.2 Bank has submitted that in the instant case, an opinion has been formed by the Central Government that the industrial dispute does not exist and therefore, it has refused to make reference by recording reasons which cannot be termed as illegal as the Central Government has decided the case on merits. In support of his submission Mr. Parikh invited my attention to the decision of the Hon'ble Supreme Court in the case of Bombay Union of Journalists v. State of Bombay, 1964 SC 1617. In the

said judgment, the Supreme Court has considered sections 10(1) and 12(5) of the Industrial Disputes Act, and laid down that the government is not precluded from considering prima facie on the merits of dispute and to refuse to refer dispute under section 10. It is also laid down that in entertaining an application for a writ of mandamus against an order made by the appropriate Government under section 10(1) read with section 12(5), the Court is not sitting in appeal over the order and is not entitled to consider the propriety or the satisfactory character of the reasons given by the said Government. I respectfully agree with the ratio laid down in the above decision. However, the law on this question is developed from time to time. In the case decided by the Supreme Court in M.P. Irrigation Karmachari Sangh v. State of M.P. (1985) 2 SCC 103, the Supreme Court was again required to consider the question about the scope of government's powers to examine frivolousness and perversity of the workmen's demands and to reach to a prima facie conclusion against making a reference. That was a case where demands of workmen working in Chambal Hydel Irrigation Scheme under the Department of Chambal Project of Government of M.P. were;

(i) Chambal allowance; (ii) dearness allowance equal to that of Central Government employees; (iii) Wages for the period of strike lasting 20 days.

The State Government referred third demand only to the Tribunal and refused to refer the first two demands on the grounds that the government was not in a position to pay dearness allowance equal to that of employees of the Central Government to any particular department and that the work charged employees were already given consolidated pay and therefore, there was no justification for paying employees the Chambal Allowance. The High Court justified the government's refusal to make the reference. While allowing the appeal preferred by the Union, the Supreme Court held that section 10 permits the appropriate government to determine whether the dispute `exists or is apprehended' and then refer it for adjudication on merits. The reference is not adjudicated which should be left to the Tribunal to decide. It is further held that there may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Government should be very slow to attempt an examination of the demand with a view to decline reference and courts will always be vigilant whenever the Government attempts

to usurp the powers of the Tribunal for adjudication of valid disputes. To allow the Government to do so would be to render Section 10 and Section 12(5) of the Industrial Disputes Act nugatory. It may be stated that the decision cited by Mr. Parikh in the case of Bombay Union of Journalists v. State of Bombay, 1964 SC 1617 is also considered and explained by the Supreme Court in the judgment of the P.M. Irrigation Karmachari Sangh (supra). Similar view is taken by the Supreme Court in the case of Ram Avtar v. State of Haryana, (1985) 3 SCC 189. While considering the provisions of section 10(1), 12 (5) and 11 A of government's powers to make or refuse reference, the Supreme Court has held that the powers are administrative in nature. Though government can examine frivolousness of the demand in order to reach to a prima facie conclusion, it is not competent to assume quasi judicial function of the Tribunal by going into merits of the demand to decide whether or not to make a reference. In Telco Convoy Drivers Mazdoor Sangh v. State of Bihar, AIR 1989 SC 1565, the Supreme Court reiterated its earlier views by holding that government while considering question whether reference should be made or not cannot delve into merits of dispute and determine the lis itself. In view of this, now the law is well settled regarding the powers of the government for making or refusing the reference. The government can examine frivolousness of demand in order to reach to a prima facie conclusion, that it is not competent to assume quasi judicial function of the Tribunal by going into merits of the demand to decide whether or not to make a reference and if refusal is based on irrelevant, extraneous and non germane grounds, it is always open for the Court to issue the writ of mandamus directing the government to reconsider its decision on relevant and germane grounds. In the instant case, from the impugned decision of the Central Government, it clearly transpires that it has decided the entire dispute on merits by observing that the workman had not put into 240 days of continuous service during any of the calender years and that the workman could not be considered for permanent absorption in the Bank's service as he did not fulfill the criteria laid down for the purpose. These findings are not even prima facie findings of the case. Mr. Parikh also invited my attention to the case of the Supreme Court in the case of Workmen v. I.I.T.I. Cycles of India Ltd. 1995 Supp. (2) SCC 733. In the said case, the State Government refused to refer the dispute raised by the minority union for adjudication on the grounds that there was a subsisting section 18(1) settlement entered into in 1978 by one of the recognised unions which had the support of the majority workers, the

terms of which were held to be fair and just by the Industrial Tribunal in an earlier case. The High Court upheld the said order by holding that even though minority union was not precluded from raising an industrial dispute, it was not obligatory on the part of the State Government to make a reference in each and every case where the union seeks a reference. It has to weigh the facts keeping in view the objectives of the industrial peace and smooth industrial relations between the parties. If the government finds that in the interest of industrial peace, it is not necessary to make a reference, it may do so. Thus, considering these facts, the Supreme Court ultimately upheld the order passed by the High Court. The Supreme Court while considering the facts of the case held that the reasons given by the government cannot be said to be irrelevant and therefore, dismissed the Special Leave Petition.

3. Thus, I am of the view that the refusal to make reference is based on irrelevant, extraneous and non germane grounds and in any case, the Central Government, as per the law laid down by the Supreme Court, is not entitled to decide the dispute on merits. It is not the say of the Central Government that the dispute in question is frivolous one and therefore, the reference is dismissed.

4. Taking into consideration this aspect of the case, I am of the view that the impugned order, Annexure C dated 24.5.95 passed by the Central Government is clearly illegal and required to be quashed and set aside.

5. Respondent No.1 is directed to reconsider its decision and take appropriate decision in the matter of making reference within six weeks from the date of receipt of the writ of this Court. The office is directed to issue writ forthwith. Rule is made absolute with no order as to costs.

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Amp/-